

Kenneth E. Lange (SBN: 074674)  
Jason L. Satterly (SBN: 239158)  
**KIMBALL, TIREY & ST. JOHN LLP**  
1202 Kettner Boulevard, Third Floor  
San Diego, CA 92101  
Telephone: (619) 231-1422  
Facsimile: (619) 234-7692  
Email: [kenneth.lange@kts-law.com](mailto:kenneth.lange@kts-law.com)

Attorneys for Defendants JULIE JERMSTAD and  
ANDERS JERMSTAD

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JEFFREY PREST, an individual,

Plaintiff,

vs.

JULIE JERMSTAD, an individual;  
ANDERS JERMSTAD, an individual,

Defendants.

Case No. 07-CV-1771-WQH-BLM

**NOTICE OF MOTION AND MOTION  
OF DEFENDANT JULIE JERMSTAD  
FOR AN ORDER REQUIRING PAYMENT  
OF COSTS IN PREVIOUSLY-DISMISSED  
ACTION AND STAYING FURTHER  
PROCEEDINGS [FRCP 41(d)];  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
SUMMARY OF UNUSABLE COSTS;  
SUPPORTING DECLARATIONS OF  
JULIE JERMSTAD AND KENNETH E.  
LANGE; [PROPOSED] ORDER**

***[NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT]***

Date: February 4, 2008  
Time: 11:00 a.m.  
Courtroom: 4  
Judge: Hon. William Q. Hayes

Action Filed: September 10, 2007

**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on February 4, 2008 at 11:00 a.m., or as soon thereafter as the matter can be heard in Courtroom 4 of the above-entitled Court located at 880 Front Street, San Diego, California 92101, Defendant Julie Jermstad ("Jermstad") will, and hereby does, move the Court pursuant to Federal Rule of Civil Procedure 41(d) for an order

1 requiring Plaintiff Jeffrey Prest ("Prest") to pay Jermstad's unusable costs in the total sum of  
2 \$39,487.25 in the previously-dismissed San Diego Superior Court Case No. G1C855923 (the  
3 "state court action") and to stay further proceedings in this matter until Prest has complied with  
4 such order.

5  
6 This motion is based on the following grounds:

- 7 1. Prest filed the state court action naming Jermstad as the sole defendant;  
8 2. Prest asserted the same claims in the state court action as he alleges in this action;  
9 3. Prest prosecuted the state court action for nearly two years causing Jermstad to  
10 incur significant costs and attorneys' fees which will not be useful in her defense of this matter;  
11 4. Prest voluntarily dismissed the state court action to avoid the results of  
12 unfavorable rulings and then re-filed in federal court to elicit a strategic advantage over Jermstad.  
13 These actions by Prest constitute bad faith litigation tactics.

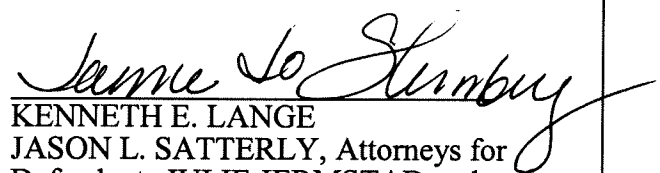
14 5. Jermstad received an award of attorneys' fees and costs in the state court action in  
15 the sum of \$107,124.00.

16  
17 This motion is based on this notice of motion and motion, the supporting memorandum of  
18 points and authorities served and filed herewith, the summary of billing entries, the supporting  
19 declarations of Julie Jermstad and Kenneth E. Lange and exhibits attached thereto, the pleadings,  
20 records and files herein and in the state court action, and on such matters as to which the Court  
21 may take judicial notice, and on such further oral and documentary evidence as may be presented  
22 at the time of the hearing of Jermstad's motion.

23  
24 Dated: January 2, 2008

**KIMBALL, TIREY & ST. JOHN LLP**

25  
26 By:

  
KENNETH E. LANGE  
JASON L. SATTERLY, Attorneys for  
Defendants JULIE JERMSTAD and  
ANDERS JERMSTAD